S.2281 – U.S. Senator Rick Santorum's Aging with Respect and Dignity Act

Most Americans are not planning for, and are not prepared for the financial impact of long-term care for themselves and their loved-ones. Individuals in need of long-term care – seniors and those with disabilities – should have the opportunity to age with respect and dignity – receiving services of their choice, in the setting of their choice.

The Medicaid program cannot sustain the projected explosive growth in long-term care spending – it is essential that we have more private dollars, rather than taxpayer dollars, being spent on long-term care services. We must do more to encourage planning and personal responsibility for long-term care to address needs today and in the future.

Themes include:

- Incentives for family care giving and keeping families together, incentives to plan for and fund long-term care options such as home-health and adult daycare, which allow families to stay together and support family caregivers.
- Personal responsibility and less dependency on taxpayer funded government programs such as Medicaid – which will preserve and strengthen Medicaid for those in need.

This legislation would also provide a financial vehicle for individuals with disabilities and families of disabled children and adults to plan for and fund long-term care services, providing greater flexibility (e.g., home and community based services such as home-health) than current government programs can provide.

The legislation has 4 provisions to address needs today (i.e., FSAs) and in the future (i.e., long-term care accounts, long-term care insurance, and life care annuities). The legislation provides incentives for long-term care insurance, alternatives to long-term care insurance (long-term care account to address the needs of those who are uninsurable, such as individuals with pre-existing conditions), and creates life care annuities.

Allow Employers to offer Long-Term Care Insurance under Cafeteria Plans

Expand current rules to permit employers to offer long-term care insurance to employees in cafeteria plans (pre-tax dollar benefits such as 401(k)s and FSAs). Current list of authorized benefits that an employer can offer employees does not include long-term care insurance.

Enhance Healthcare Flexible-Spending Account (FSA) Rules

Enhance healthcare flexible-spending account rules to allow funds to be used for long-term care services (such as home-health, adult daycare, respite care, etc) for a family member (including parents, in-laws, spouse, siblings, children). For example, employed individuals covered by FSAs could use the account to pay for services for a family member while they are at work – allowing the individual to remain in the workforce and the family member to receive services best suited for their needs.

Create Long-Term Care Accounts – Pre-Funding Long-Term Care Needs

Create HSA-like savings accounts for long-term care needs. Many individuals are uninsurable due to pre-existing conditions (i.e., medical diagnosis, disabilities), while others are reluctant to purchase long-term care insurance (for reasons including not wanting to spend money on a policy that may never be needed, or fear that the company will not be around decades from now when care may be needed).

- Create an investment account with IRA/HSA[1]-like features that individuals can use to set aside tax-preferred money for the use of long-term care services for themselves or a family member (including parents, in-laws, spouse, siblings, children). Set an annual limit of $5,000 on amount that could be deposited – would increase annually by medical care cost adjustment.
- Funds could be used for bona fide long-term care expenses (i.e., home-health, adult daycare, assisted living, nursing home care, etc)[2] or for the purchase of long-term care insurance or life care annuity for account owner or a family member. Money spent on behalf of a family member would not be subject to gift taxes.
- Similar to HSAs, money would go in pre-tax, would grow tax-deferred and could be taken out tax-free as long as taken out for long-term care needs.[3]
- Upon death, unused amounts in the accounts could be rolled-over into the same type of account for a loved-one.

Create Life Care Annuities

One of the most significant reasons that individuals do not purchase long-term care insurance is the hesitation of spending significant amounts of money over the years on a policy that may never be needed. Current law does not allow for long-term care policies to build-up a cash value.

- Create life care annuities – combining features of annuities and long-term care insurance. Annuity would pay a steady income that would increase significantly in the event of a disability, to be used to pay for long-term care expenses.
- Long-term care insurance and annuities are both underutilized tools to plan for retirement. Combining the products makes them more affordable than if each were purchased separately.
- Life care annuities address the market problems with annuities (healthier than average tend to purchase, driving up the cost) and long-term care insurance (sicker than average tend to purchase, driving up the cost) – the risks of each offset each other. The annuity reduces the need for underwriting, therefore significantly increasing the people that would be eligible (estimated 21% increase, from 77% to 98% of 65 year olds would be eligible)[4].

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[1] Unlike HSAs the accounts would not need to be paired with a high-deductible health plan.
[2] As defined by US Code Sec. 7702B(c) – necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal care services.
[3] If taken out for other purposes, it would be subject to penalties similar to those to which 401(k) and IRAs are subject.
[4] Murtaugh, Christopher M.; Spillman, Brenda C.; Warshawsky, Mark J., "In Sickness and in Health: An Annuity Approach to Financing Long-Term Care and Retirement Income." *Journal of Risk and Insurance*, Jun 2001, v.68, iss.2, pp.225-53.